



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECORDS AND REPORTING

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DATE: DECEMBER 9, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAY)

FROM: DIVISION OF TELECOMMUNICATIONS (ISLER) *APK RD*
DIVISION OF LEGAL SERVICES (K. PEÑA; B. KEATING) *WMP 8/12*

RE: DOCKET NO. 991532-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 4053 ISSUED TO AMERICAN CYBER CORPORATION D/B/A DISCOUNT PLUS FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 12/21/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\991532.RCM

CASE BACKGROUND

- **07/27/95** - Discount Plus was granted IXC Certificate No. 4053. The company reported revenues of \$63,461 on its latest regulatory assessment fee return for the period ending 12/31/97.
- **09/30/97** - Order No. PSC-97-1141-FOF-TI was issued in Docket No. 970961-TI, which imposed a \$500 fine or canceled the company's certificate for nonpayment of the 1996 regulatory assessment fee.
- **02/27/98** - The company paid the fine and fee, and Docket No. 970961-TI was closed.

DOCUMENT NUMBER-DATE

15045 DEC-99

RECORDS AND REPORTING

LOCKET NOS. 991532-11
DATE: DECEMBER 9, 1999

- **12/10/98** - The company was mailed the 1998 regulatory assessment fee (RAF) notice. Payment was due February 1, 1999.
- **03/17/99** - The Division of Administration mailed a delinquent letter to the company.

As of December 2, 1999, Discount Plus had not paid the 1998 RAF, plus statutory penalty and interest charges for 1998. In addition, the company has a penalty and interest balance from 1996 and an extension fee balance on the 1997 RAF. Therefore, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$1,000 fine or cancel American Cyber Corporation d/b/a Discount Plus's IXC certificate for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$1,000 fine or cancel the company's certificate if the fine and the regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, the company's interexchange telecommunications certificate should be canceled administratively. (Isler)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.474, Florida Administrative Code, establishes the requirements for cancellation of an interexchange telecommunications company certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of Administration's records show that Discount Plus had not paid its 1998 regulatory assessment fee in full, plus statutory penalty and interest charges for 1996, 1997, and 1998. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies and has not requested cancellation of its certificate in compliance with Rule 25-24.474, Florida Administrative Code.

This is the second docket opened against Discount Plus for nonpayment of the RAF. On September 30, 1997, Order No. PSC-97-1141-FOF-TI was issued, which imposed a \$500 fine or canceled the company's certificate. The company paid the fine and the fee on February 27, 1998, and the docket was closed.

Accordingly, staff recommends that the Commission assess a \$1,000 fine for failure to comply with the Commission rules or cancel the company's certificate if the fine and the regulatory assessment fees, along with statutory penalty and interest charges, are not paid within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, the company's interexchange telecommunications certificate should be canceled administratively.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed upon receipt of the fine and fees or cancellation of the certificate, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order. (K. Peña; B. Keating)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon receipt of the fine and fees or cancellation of the certificate.